



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2022-0013]

Notice of Proposed Buy America Waiver and Request for Comment

AGENCY: Federal Transit Administration, Department of Transportation (DOT).

ACTION: Notice; Request for Comment.

SUMMARY: The Federal Transit Administration (FTA) has received multiple individual requests for a Buy America waiver for non-ADA accessible passenger vans and minivans that can be used in vanpool programs, based on the nonavailability of Buy America-compliant vehicles. FTA is proposing a partial general nonavailability waiver of limited duration for mass-produced, unmodified non-ADA accessible vans and minivans. Under FTA's proposal, in lieu of applying Buy America's rolling stock standard to these vans and minivans, FTA would require the vans and minivans to have their place of final assembly and engine country of origin in the United States as reported under the American Automobile Labeling Act. FTA proposes that this partial waiver will expire after two years, or when a compliant vehicle becomes available, whichever is first. FTA seeks public and industry comment on whether FTA should grant the waiver as proposed, or in a modified form.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: Please submit all comments electronically to the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

INSTRUCTIONS: All submissions must refer to the Federal Transit Administration and the docket number in this notice (FTA-2022-0013). Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public

on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Jason Luebbbers, FTA Attorney-Advisor, at (202) 366-8864 or Jason.Luebbbers@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether FTA should grant a partial Buy America waiver of limited duration for the procurement of mass-produced, unmodified (complete and fully assembled as provided by the original equipment manufacturer) non-ADA accessible passenger vans and minivans.

BACKGROUND

Under FTA's Buy America statute, FTA may obligate funds for a project to procure rolling stock only if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and final assembly of the rolling stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). A manufacturer of rolling stock must submit to pre-award and post-delivery audits and independent inspections to verify its compliance with Buy America. 49 U.S.C. 5323(m).

FTA may waive Buy America requirements for a product if, among other reasons, a compliant version of the product is not produced in a sufficient and reasonably available amount or is not of a satisfactory quality. 49 U.S.C. 5323(j)(2)(B). FTA cannot deny a request for a nonavailability waiver unless it can provide the waiver applicant with a written certification that: the item is produced in the United States in a sufficient and reasonably available amount; the item produced in the United States is of a satisfactory quality; and includes a list of known manufacturers in the United States from which the item can be obtained. 49 U.S.C. 5323(j)(6).

On October 20, 2016, FTA granted a general public interest waiver for mass-produced, unmodified non-ADA-accessible vans and minivans, only from its domestic content requirement,

for three years or until a compliant manufacturer came forward, whichever came first.

(<https://www.govinfo.gov/content/pkg/FR-2016-10-20/pdf/2016-25370.pdf>). At that time FTA had identified some models of van or minivan for which final assembly occurred in the United States, but could not identify a van or minivan that also satisfied the domestic content requirement. FTA, therefore, temporarily waived the domestic content requirement, but continued to require final assembly in the United States for mass-produced, unmodified non-ADA accessible vans and minivans. The waiver expired on September 30, 2019. Since the waiver's expiration, FTA has received requests to reissue a general public interest waiver for non-ADA-accessible vans and minivans from grant recipients, the American Public Transit Association (APTA), and turnkey vanpool service provider Enterprise.

In 2021, FTA received three applications for waivers for non-ADA accessible vans and minivans to be used as vanpool vehicles, based on the nonavailability of compliant vehicles. A vanpool vehicle is a vehicle with seating capacity for at least six adults not including the driver. 49 U.S.C. 5323(i)(2)(C). The three applicants are Coast Transit Authority of Biloxi, Mississippi; the Metropolitan Transportation Commission of San Francisco, California; and the Ann Arbor Area Transportation Authority in Michigan. All three applications are to support procurements of service contracts with "Commute with Enterprise" to carry out vanpool programs of between 40 and 250 vehicles.

Today, final assembly for a number of mass-produced, unmodified non-ADA accessible van and minivan models occurs in the United States. FTA recipients, however, cannot verify the domestic content of such vehicles because manufacturers are unwilling to sign the required Buy America certification regarding minimum domestic content or submit to FTA's pre-award and post-delivery audit requirements. Reasons that some of these manufacturers have provided to FTA for their unwillingness to comply with these requirement include: (1) FTA-funded procurements do not generate a large percentage of overall sales of such vehicles, and therefore, their distribution chain is not set up for compliance with FTA Buy America

requirements; and (2) it is burdensome to determine the components and subcomponents and their origin for Buy America audit purposes, and there are concerns regarding confidentiality of component pricing in audit reporting.

FTA, therefore, currently is unable to identify a model that complies with its Buy America's 70- percent domestic content requirement. FTA recipients and their contractors use these vehicles to operate vanpool service. Without a waiver, recipients could not procure these vehicles with FTA funds, which may result in such consequences as the operation of vehicles beyond their useful life; procurement of larger Buy America compliant vehicles that are more expensive and have less desirable access/egress characteristics compared to minivans; or termination of vanpool programs or failure to form new vanpool service, which could have climate change and equity impacts because vanpools provide an important transportation alternative to private passenger vehicles both in large cities and rural areas, and service to the elderly and disabled who do not need an ADA-accessible van.

PROPOSED WAIVER

Under the American Automobile Labeling Act (AALA), manufacturers of mass-produced passenger motor vehicles for sale in the United States must report to the National Highway Traffic Safety Administration (NHTSA), by carline and by model year, information about each vehicle's place of assembly and the country of origin of its engine and transmission. See, 49 U.S.C. 32304 and 49 CFR part 583. This information is available on NHTSA's website at <https://www.nhtsa.gov/part-583-american-automobile-labeling-act-reports>.

In response to the three individual applications for nonavailability waivers of non-ADA accessible vans and minivans, FTA proposes the following partial general nonavailability waiver for mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver. In lieu of applying the Buy America standards for rolling stock, FTA would require:

- (1) Final assembly must be in the United States, as reported to NHTSA under the AALA;
- (2) The country of origin of the engine, or (in the case of electric vehicles) motor must be the United States, as reported to NHTSA under the AALA;
- (3) The waiver is available to all grant recipients;
- (4) The waiver would expire two years from issuance, or upon a fully Buy America-compliant van or minivan becoming available, whichever occurs first.

FTA is proposing to require that engines/motors be of United States origin, as reported under the AALA, as an easily verifiable way to maximize domestic content in vans and minivans absent a fully compliant vehicle. Manufacturers already report this information, and the information is readily available to the public, thus limiting burdens for manufacturers and procuring entities. For the duration of this partial general nonavailability waiver, FTA recipients would not have to submit individual applications for nonavailability waivers for mass-produced, unmodified non-ADA accessible vans and minivans.

FTA is not proposing to require that transmissions must be of United States origin, so that the procurement of hybrid vans or minivans with transmissions manufactured outside the United States would be eligible for FTA funding, and because electric vehicles do not have transmissions. The availability of hybrid and electric vehicles for use in federally funded vanpool service will contribute to the reduction of greenhouse gas emissions and environmental justice. FTA could revise this proposed waiver to require transmissions for hybrid vehicles be of United States origin if comments or later changes in market conditions demonstrate hybrid vans and minivans are available with transmissions made in the United States.

REQUEST FOR COMMENT

This notice satisfies FTA's requirement to publish any proposed Buy America waiver in the Federal Register and provide the public with a reasonable period of time for notice and comment. 49 U.S.C. 5323(j)(3). FTA seeks public and industry comment from all interested parties. In particular, FTA seeks comment regarding whether the waiver should be approved, and, if so,

whether it should be modified from FTA's proposal and why. Relevant information and comments will help FTA understand completely the facts surrounding the waiver requests and FTA's proposal.

Nuria I. Fernandez,

Administrator.

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